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Filed
3-7-07

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CITY OF SAN DIEGO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

CITY OF SAN DIEGO, a municipal
corporation,

Plaintiffs,

vs.

WILLKIE FARR AND GALLAGHER, LLP,
an entity of unknown qualification; and DOES
1-100, inclusive,

Defendants.

Case No.: 37-2007-00072584 -
Cu-Bc-CTZ
COMPLAINT FOR:

- (1) BREACH OF CONTRACT
- (2) PROFESSIONAL NEGLIGENCE;
- (3) INTENTIONAL FRAUD -
CONCEALMENT;
- (4) FALSE CLAIMS ACT (Govt. Code
§§ 12650-12655); and
- (5) UNFAIR BUSINESS PRACTICES
(B&P Code § 17200 *et seq.*)

**EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE
SECTION 6103**

**(GENERAL CIVIL CASE - DAMAGES
EXCEED \$25,000)**

Jury Trial Requested

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I.

OVERVIEW

1. In February 2005, the City hired Los Angeles-based forensic accounting firm Kroll, Inc. ("Kroll"), to investigate the City's under funding to its employees pension fund.

2. Kroll formed a three-man Audit Committee to lead the investigation. Kroll populated the Audit Committee with its own allegedly highly qualified professionals, including the former Chairman of the Securities and Exchange Commission, Arthur Levitt, Jr.

3. Before it began work, Kroll and its managing director, Troy Dahlberg, demanded that the City pay for the Audit Committee's lawyer, which the City was advised was to be Willkie Farr & Gallagher LLP ("Willkie Farr"), a New York, white-collar, securities defense firm.

4. The City agreed to be responsible for the lawyers' fees for the limited purposes of providing "counsel and assistance to the Audit Committee in connection with its independent investigation," and for assisting the Audit Committee with necessary "inquiry or investigation."¹

5. Throughout its work for the City, Kroll and its managing director, Dahlberg, represented that the lawyers were being used for one narrow purpose: "to obtain guidance on matters of law."²

6. Apparently not content with the firepower of its three-man investigating team, Kroll charged the City for the efforts of not 10, or 20, or even 30 other investigators, but with *69 other associates and partners, including attorneys*. For the efforts of this small army, Kroll charged the City more than \$10 million.

7. After substantially completing its work, the Audit Committee handed the project over to Willkie Farr. Willkie Farr then undertook its own investigation, performing

¹ April 19, 2005 letter from Willkie Farr to Kroll Re: Terms of Engagement as Counsel to the Audit Committee of the City of San Diego. (Exhibit 1).

² June 10, 2005 letter from the Audit Committee of the City of San Diego to Hon. Richard Murphy. (Exhibit 2).

1 repetitive document review, engaging in unnecessary management and oversight work, and,
2 eventually spending *400% more time* authoring the Report than Kroll did!

3 8. Thus, notwithstanding its narrow, agreed role of providing necessary counsel
4 and assistance, Willkie Farr itself used *39 additional associates and partners*, all from New
5 York, with billing rates as high as \$865 per hour, to do the same work again.

6 9. Willkie Farr eventually billed the City a sum total of \$9,759,918.25 for the
7 work performed by its three dozen associates and partners.

8 10. In addition to being duplicative and unnecessary, the massive amount of work
9 that Willkie Farr undertook was also beyond the scope of the City's agreement to pay the
10 firm.

11 11. There are at least three reasons why the City would not have retained, or
12 agreed to pay, Willkie Farr to author the Report, or to do a great many of other tasks for
13 which Willkie Farr billed it. *First*, the City had already paid another law firm more than \$5
14 million to prepare a legal analysis and to author a report on the exact same subject matter.
15 That expenditure proved to be a total waste of money because of the lawyers' conflicts of
16 interest, which resulted in a work of advocacy, rather than independent assessment. *Second*,
17 thinking it had learned its lesson, the City this time wanted the opinion of a forensic
18 accounting firm, and specifically Kroll, which the City expected to perform its own analysis
19 and reach its own conclusions. *Third*, the lawyers at Willkie Farr were not even members of
20 the California bar; if the City knew the lawyers would perform their own substantive analysis
21 of the City's pension system, much less that they would author substantial portions of the
22 Report, the City Attorney would have insisted that the lawyers be licensed to practice law in
23 California, which the Willkie Farr lawyers were not.

24 12. The City did not agree, and would never have agreed, to pay *two* consultants
25 to perform the same work *twice*. Yet, because of Kroll's and Willkie Farr's wrongdoing, this
26 is *exactly* what occurred.

13. For Willkie Farr's breaches, the City seeks the \$9,759,918.25 it paid, trebled (to \$29,279,754.75) under the applicable False Claims Act, penalties, and punitive damages.

II.

VENUE AND JURISDICTION

14. Venue is proper in this Court because the events and injuries complained of in this Complaint occurred in the City and County of San Diego.

15. The amount in controversy under this Complaint exceeds the minimal jurisdictional limit of this Court, and the claims asserted in this Complaint are within the subject-matter jurisdiction of this Court.

III.

BACKGROUND

16. The City is in the throes of one of the most daunting political and financial crises in its history. The City is currently facing a pension funding debt of approximately \$2 billion in its pension system.

A. The City Hires Vinson & Elkins

17. The City retained Houston-based law firm Vinson & Elkins L.L.P. (“Vinson & Elkins”) on February 18, 2004 to undertake an inquiry into the City’s financial disclosure practices.³

18. The firm was to investigate the City's financial control structure to identify any misconduct and practices that allowed the disclosure failures to occur.

19. On September 16, 2004, Vinson & Elkins issued its report titled “Report on Investigation: The City of San Diego, California’s Disclosures of Obligation to Fund the San Diego City Employees’ Retirement System and Related Disclosure Practices” (“the Vinson & Elkins Report”).⁴ The Vinson & Elkins Report described the events causing the pension

³ February 18, 2004, letter from Vinson & Elkins Partner Paul S. Maco to former City Attorney Casey Gwinn. (Exhibit 3).

⁴ September 16, 2004, Vinson & Elkins: Report on Investigations. The City of San Diego, California's Disclosures of Obligations to Fund the San Diego City Employees' Retirement System and Related Disclosure Practices 1996-2004 with Recommended Procedures and Changes to the Municipal Code. (Exhibit 4).

1 deficit, including two different agreements between the City Council and the SDCERS Board
2 of Administrations ("Board") as the primary sources of the pension deficit. These agreements
3 provided for the SDCERS Board to accept under funding of the retirement system in
4 exchange for the City Council's agreement to grant enhanced pension benefits for City
5 employees. The first deal, commonly referred to as Manager's Proposal I ("MP I"), was
6 approved in 1996. The second deal, a modification of the first deal, called Manager's
7 Proposal II ("MP II"), was approved in 2002. The Vinson & Elkins Report found that a series
8 of disclosure violations occurred. The Vinson & Elkins Report, however, made no mention of
9 any individual violations of law by City or SDCERS officials. In fact, no assessment of
10 potentially illegal acts was made by Vinson & Elkins during its investigation.

11 20. A new City Attorney, Michael Aguirre, was elected on November 2, 2004 and
12 took office on December 6, 2004. The new City Attorney immediately announced an
13 investigation into the City's finances⁵ and thereafter released a series of Interim Reports
14 outlining alleged illegal acts that occurred in the approval of the Manager's Proposal I in 1996
15 and Manager's Proposal II in 2002. The first Interim Report was issued on January 14, 2005⁶
16 and the second Interim Report was issued on February 9, 2005.⁷

17 **B. The City Hires Kroll**

18 21. The City Council then hired Kroll, a Los Angeles-based forensic accounting
19 firm, to reconcile the findings of Vinson & Elkins and the City Attorney. Defendant Troy
20 Dahlberg, managing director of Kroll, executed a letter of engagement to the City on February
21 10, 2005. The Kroll scope of services were stated as follows:

22 The City has requested that Kroll (1) receive, review and
23 evaluate the findings of the investigations by VINSON &
24 ELKINS and the City Attorney. The City has also requested
Kroll provide consulting assistance in assessing internal control

25 ⁵ December 9, 2004: Press release from the office of City Attorney Michael Aguirre. "Statement from City
26 Attorney Michael J. Aguirre: Financial Disclosure Practices Investigation, and Decision Not to Join San Diego's
Retirement System." (Exhibit 5).

27 ⁶ January 14, 2005: Interim Report No. 1 Regarding Possible Abuse, Fraud, and Illegal Acts by San Diego City
Officials and Employees. Report of the San Diego City Attorney Michael J. Aguirre. (Exhibit 6).

28 ⁷ February 9, 2005: Interim Report No. 2 Regarding Possible Abuse, Fraud, and Illegal Acts by San Diego City
Officials and Employees. Report of the San Diego City Attorney Michael J. Aguirre. (Exhibit 7).

1 deficiencies affecting matters discussed in the investigation
2 reports.⁸

3 22. The letter also described that Kroll's investigation was intended to satisfy the
4 needs of the City's outside auditor, KPMG. Specifically, Kroll requested unfettered access to
5 personnel and documents of the City, SDCERS, Vinson & Elkins, the City Attorney, and
6 other potentially involved parties.⁹ Kroll also retained the authority to hire legal counsel for
7 representation at the City's expense. The City Council approved the Kroll contract at its
8 February 14, 2005 meeting.¹⁰

9 23. At the February 14, 2005 City Council meeting, Lynn Turner, a consultant for
10 Kroll, explained that Kroll would take the reports issued by the City Attorney and Vinson &
11 Elkins, compare the data and findings, reconcile the differences, and issue its findings to
12 KPMG.¹¹

13 24. A Kroll representative appeared in front of the City Council on March 8, 2005.
14 At the meeting the City Council authorized Kroll to establish "the Audit Committee of the
15 City as contemplated by the Sarbanes-Oxley Act of 2002" as discussed below.¹²

16 25. It is difficult to overstate the importance of Kroll's investigation to the City of
17 San Diego. The *San Diego Union-Tribune* editorial board wrote:

18 The indispensable key to getting the city back on its feet
19 financially is the three-member audit committee chaired by
20 former Securities and Exchange Commission chairman Arthur
21 Levitt. Operating with total independence, the panel is assisting
22 KPMG, the City's outside auditor, in completing the stalled
23 financial statements that have locked San Diego out of capital
24 markets for over a year... This probe is instrumental to both the
25 SEC's anticipated enforcement action against the city and U.S.
26 Attorney Carol Lam's criminal investigation... Without the
27 independent oversight provided by the audit committee, all of

28 ⁸ February 10, 2005: Letter from Troy Dahlberg to Mayor Richard Murphy and San Diego City Council. Re: Independent Services for the City of San Diego. (Exhibit 8).

⁹ Exhibit 8.

¹⁰ February 14, 2005 meeting of the San Diego City Council. (Exhibit 9).

¹¹ Transcript of Lynn Turner's presentation at the February 14, 2005 meeting of the San Diego City Council. (Exhibit 10).

¹² March 8, 2005 meeting minutes of the San Diego City Council. Resolution Number R-300203. (Exhibit 17).

1 San Diego's efforts to regain its financial strength would
2 collapse in one catastrophic stroke....¹³

3 **C. Kroll And The City Hire Wilkie Farr**

4 26. As alleged above, Kroll recommended Willkie Farr as its attorney, provided
5 that the City would agree to pay the firm.

6 27. Willkie Farr thereafter confirmed the scope of its retention by a letter
7 agreement that it submitted to the Audit Committee and the City ("the April Letter
8 Agreement").¹⁴ The April Letter Agreement is a binding and enforceable contract. The April
9 Letter Agreement defined the scope of Willkie Farr's services for which the City would be
10 responsible for payment as follows:

11 The purpose of our engagement is to assist the Audit Committee
12 in connection with financial reporting and other issues that have
13 arisen concerning the San Diego City Employees' Retirement
14 System ("SDCERS"). The scope of our engagement will
15 include counsel and assistance to the Audit Committee in
connection with its independent investigation into SDCERS
finances and disclosure. It will also include other matters that,
in the judgment of the Audit Committee, may require inquiry or
investigation.¹⁵

16 **IV.**

17 **WILKIE FARR'S KNOWN WRONGDOING**

18 **A. Willkie Farr Breached Its Contract With The City By Billing For Services**
19 **Outside The Agreed Scope Set Forth In The April Letter Agreement**

20 28. As set forth in the next section, Willkie Farr has intentionally thwarted the
21 City's efforts to learn what services Willkie Farr was supposedly performing to earn its nearly
22 \$10 million fee.

23 29. From what the City has learned, it is clear that Willkie Farr billed the City for
24 work falling outside the scope of work in the April Letter Agreement, viz., (1) to provide
25 "counsel and assistance to the Audit Committee in connection with its independent
26

27 ¹³ August 11, 2005: "Aguirre's Gambit." *San Diego Union-Tribune*. (Exhibit 11).

28 ¹⁴ Exhibit 1.

¹⁵ Exhibit 1.

1 investigation,” and (2) to assist the Audit Committee with necessary “inquiry or
2 investigation.”

3 30. The City did not retain Willkie Farr, or agree to pay Willkie Farr, to do any of
4 the following:

- 5 a. formulate a program for preparation of the written report;
- 6 b. consider the issues to be addressed in report;
- 7 c. assess the currently available information;
- 8 d. identify the areas requiring additional activity;
- 9 e. prepare for or conduct witness interviews;
- 10 f. review City e-mails or electronic documents;
- 11 g. oversee or manage the investigative team;
- 12 h. review hardcopy documents turned over by City employees
13 and Elected Officials in response to various regulatory and
14 governmental subpoenas and document requests;
- 15 i. have discussions with law enforcement authorities and
16 auditors as to progress on investigative efforts;
- 17 j. review and process information collected by Vinson &
18 Elkins as part of its investigation including examination of
19 witness memoranda, exhibits, and related materials;
- 20 k. perform projects concerning the Board of the San Diego
21 City Employees' Retirement System; or
- 22 l. undertake efforts directed to seeking compliance by the
23 City with all regulatory and government subpoenas and
24 document requests.

25 31. The City did not agree to pay Willkie Farr for any of these tasks because the
26 City had already agreed to pay another consultant (Kroll) to do these things.

32. The following is a cumulative list of tasks and related charges compiled from the Willkie Farr invoices received by the City from November 16, 2005 through September 13, 2006:

TASK IN BILLS FROM NOVEMBER 16, 2005 THROUGH SEPTEMBER 13, 2006	TOTAL
1. Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	\$3,092,237.40
2. Preparation for witness interviews, interviews of key witnesses, and follow-up regarding the same.	\$2,045,086.20
3. Review of City e-mail and electronic documents.	\$862,433.10
4. Activities related to oversight and management of investigative team.	\$858,332.10
5. Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	\$227,045.80
6. Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	\$93,595.00
7. Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	\$42,419.50
8. Projects concerning the Board of the San Diego City Employees' Retirement System.	\$36,418.40
9. Efforts directed to seeking compliance by the City with all regulatory and government subpoenas and document requests.	\$8,493.00
TOTAL	\$9,759,918.25

33. The vast majority of Willkie Farr's supposed services fall far outside the categories of agreed work in the April Letter Agreement. The City agreed to pay Willkie Farr to provide "counsel and assistance to the Audit Committee" and to assist with "inquiry or investigation," not to *formulate* the investigative program, or to *consider* what issues to

1 address, or *to identify* areas requiring additional activity, or to *oversee or manage* the
2 investigative team.

3 **B. Willkie Farr Breached Its Contract With The City By Billing For Services**
4 **That Duplicated Those The City Hired Kroll To Perform**

5 34. In addition to billing the City for work that the City did not agree to pay,
6 Willkie Farr billed the City for work that had already been performed.

7 **1. Duplicative document review changes**

8 35. For example, during the last 11 months of the investigation, Kroll charged
9 approximately \$2.5 million for document review. In comparison, Willkie Farr billed
10 approximately \$2.3 million for document review.

11 36. Not only was Willkie Farr billing for the same work Kroll was performing, it
12 was doing so by hiring unnecessary temporary attorneys and paralegals in New York-based
13 private consulting firms.¹⁶ Specifically, according to Willkie Farr's bills, about 40 percent of
14 the firm's document review was conducted by part-time attorneys and paralegals from
15 temporary staffing companies, and not from its large New York office.¹⁷

16 **2. Duplicative management and oversight charges**

17 37. In the end, Kroll and Willkie Farr charged a strikingly similar amount in their
18 separate management and oversight of their separate investigative efforts. Over the course of
19 the last 11 months of the investigation, Willkie Farr billed more than \$858,000 for "Activities
20 related to oversight and management of investigative team." For the same period of time,
21 Kroll billed the City \$868,665 for "Audit Committee oversight and management of
22 investigation."

23 38. The City never agreed to pay Willkie Farr to conduct a separate and parallel
24 investigation, doubling the document review effort to Kroll, who staffed its own attorneys to
25 work on the investigation. Per force, the City never agreed to pay one consultant (Kroll) to

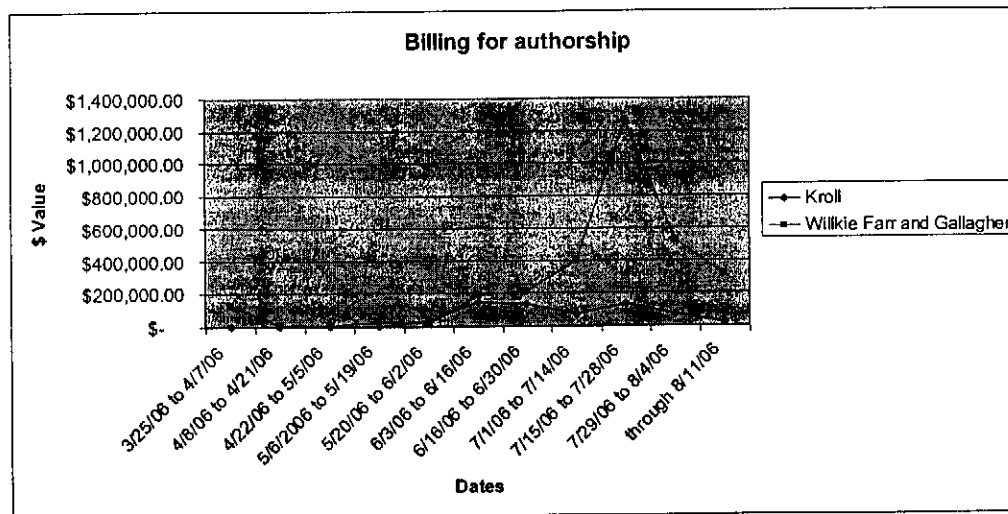
26 _____
27 ¹⁶ March 16, 2006 invoice from Willkie Farr to City of San Diego; April 14, 2006 invoice from Willkie Farr to
City of San Diego. (Exhibit 12).

28 ¹⁷ It is important to stress that it is not currently possible for the City to audit the work of the outside consultants
because Willkie Farr refuses to turn over detailed billing for their services.

1 hire another consultant (Willkie Farr), to pay nearly \$1 million to temporary workers to do the
2 same analysis that the first consultant was doing.

3 3. Duplicative authorship charges

4 39. Willkie Farr ended up writing the bulk of the Kroll Report. In fact, it was
5 Willkie Farr that billed 84 percent of the total cost the City incurred for the analyzing and
6 writing the Report. Kroll, which was hired to write the report and whose representative made
7 up the entirety of the so-called Audit Committee, was responsible for just 16 percent of the
8 charges for analyzing and writing the Report. A graphical presentation illustrates the extent
9 and timing of Willkie Farr's billing to prepare the Report, compared to Kroll's:



19 Contrary to the City's expectation that Kroll was authoring the Report, this graph provides
20 clear evidence that the securities defense firm, not the forensic accountants, were the principal
21 authors of the Report.

V.

**WILLKIE FARR PURPOSEFULLY DEPRIVED THE CITY
OF KNOWLEDGE OF WHAT IT WAS DOING**

A. Willkie Farr Abandons Its Initially Appropriate Billing Practice

40. Willkie Farr submitted its first bill to the City on May 17, 2005, for a sum of \$25,406.¹⁸ This would be the one and only bill Willkie Farr submitted that complied with the City's billing requirements. It complied because the bill included a breakdown of services, in half-hour increments and the initials of the employees working on the task. The description on the invoice included items such as "review reports and correspondence" and "begin reading Luce, Forward report." That bill, however, would be the last detailed invoice by the firm. The new billings—the first of which arrived on June 22, 2005¹⁹—included only the most minimal "information," identical in form and content to those submitted by Kroll.

41. Throughout the next two years, Willkie Farr sent a total of 17 invoices without details of work performed to the City. The lack of accurate billing has rendered the City unable to properly audit the engagement to ensure that work was completed at a proper cost.

**B. Kroll Makes False Claims Regarding The Status Of The Investigation,
And Willkie Farr Does Not Disclose The False Claims**

42. Dahlberg sent a status report to the City Council on June 10, 2005.²⁰ The report stated that Kroll employees had been working with Vinson & Elkins employees to gather information; communicate with law enforcement agencies; collect additional documents; prepare correspondence with the SDCERS Board; and coordinate with KPMG, the City's outside auditor. The status report outlined some of the work that had been completed, such as the review of documents collected in response to U.S. Attorney's Office and SEC subpoenas. But rather than identify areas for more in-depth analysis, Kroll and notified the City Council that another City-wide document production was necessary.

¹⁸ Willkie Farr invoice from May 19, 2005. (Exhibit 13).

¹⁹ Willkie Farr invoice from June 22, 2005. (Exhibit 14).

²⁰ Exhibit 2.

1 43. Representatives of Kroll appeared before the City Council on June 14, 2005, to
2 give a presentation on their progress and answer questions from City officials. At the
3 meeting, Levitt told the City Council that Kroll and Willkie Farr's work—which included
4 comparing the City Attorney and Vinson & Elkins investigations, writing and issuing an
5 investigative report, and drafting remediation steps—would be completed before the end of
6 the calendar year. Levitt said, "I would be very disappointed if I wasn't out of here by the end
7 of the year."²¹

8 44. At this point, neither Kroll nor Willkie Farr would provide any detailed billing
9 or a written work plan. Obviously, the lack of details in the Kroll invoices prevented the City
10 from determining what, if any, work was being done. A list of detailed bills would have
11 allowed the City to ensure that Kroll and Willkie Farr were completing the tasks they claimed
12 and in a timely manner.

13 45. On information and belief, Dahlberg, Kroll, and Willkie Farr, knew that the
14 statement Levitt made about desiring to produce the Report by the end of the year was false.
15 Rather, Levitt, Kroll, and Willkie Farr, knew from the status of their work product at that
16 time, and desired, that the work would be carried over, and, more importantly to them, billed,
17 for another half year or more of 2006.

18 46. In order to assess Levitt's claim, the City Attorney requested that Kroll and
19 Willkie Farr provide detailed invoices of their work. This request, like previous ones, was
20 ignored.

21 47. The next month, in July 2005, Willkie Farr sent another invoice of \$347,429.²²
22 The invoice included charges for \$18,125 for "Disbursements and other charges" and
23 \$329,304 for "Professional Services."

24 48. A month later, on August 11, 2005, the City Attorney wrote another letter to
25 Kroll officials requesting detailed billings. The City Attorney wrote, "[t]he City Attorney
26

27 ²¹ Transcript of Arthur Levitt's comments at the June 14, 2005 meeting of the San Diego City Council. (Exhibit
28 15).

²² July 15, 2005 invoice from Willkie Farr to City of San Diego. (Exhibit 16).

1 again requests that Kroll and its legal counsel provide detailed billings for all amounts thus far
2 billed to or paid by the City of San Diego. Although such billings are required under
3 applicable City contract provisions and policies, they have not been provided.”²³

4 49. Willkie Farr submitted an invoice on September 13, 2005 for \$488,040.
5 Despite the repeated requests from the City Attorney, the sole detail listed by Kroll for the
6 work was “For Professional Services Rendered.”²⁴

7 50. Representatives of Kroll and Willkie Farr appeared before the City Council on
8 September 26, 2005 to provide an update on its progress. At the meeting, Dahlberg said that
9 detailed billings were not provided to the City because City Manager P. Lamont Ewell said it
10 was not necessary. Dahlberg and Ewell both stressed that the City maintained the right to
11 audit the work of Kroll and at any time. During this conversation, the City Attorney said the
12 City Manager does not possess the authority to relieve a consultant of the requirement to
13 comply with the City’s billing guidelines or AICIPA requirements set forth in AU § 319.²⁵
14 Aguirre said:

15 What is inappropriate is the City Manager not doing his job. He
16 has no legal authority, no legal authority, no legal authority to
17 relieve [Kroll] of the obligation to provide a detailed billing that
18 I have requested you for and as every other firm with the
exception of Kroll..., every other firm has provided detailed
billing.²⁶

19 51. Representatives of Willkie Farr chose not to discuss their reluctance to submit
20 detailed bills to the City despite their original bill submitted on May 17, 2005 contained the
21 required detail. The firm did, however, submit another invoice to the City on October 19,
22 2005 for another \$980,181—the largest monthly invoice at that point.

23
24
25
26 ²³ August 11, 2005 letter from City Attorney Michael Aguirre to Arthur Levitt, Troy Dahlberg, and Lynn Turner.
(Exhibit 17).

27 ²⁴ September 23, 2005 Kroll invoices to P. Lamont Ewell. (Exhibit 18).

28 ²⁵ Transcript of the September 26, 2005 meeting of the San Diego City Council. (Exhibit 19).

²⁶ Exhibit 19.

1 52. Willkie Farr, from the time it was engaged through November 16, 2005, sent
2 six invoices to the City for a total of more than \$2.49 million.²⁷ These invoices included
3 charges for \$150,000 for "Disbursements and Other Charges" and more than \$2.3 million for
4 "Professional Services."²⁸

5 53. These Willkie Farr invoices violated the City's internal controls. The lack of
6 detail left the City unable to audit the work of the firms to ensure the proper review of
7 documents was completed before expending public funds. Worse, it prevented City officials
8 from adequately monitoring the progress of the firms.

9 54. On information and belief, Willkie Farr deprived the City of the detailed
10 billing information to deprive the City of the ability to detect the falsity of Levitt's earlier
11 statement about his desire to complete the investigation by year's end.

12 **C. Kroll and Willkie Farr's New Billing Detail Remains Inadequate**

13 55. Kroll and Willkie Farr began sending invoices with a slightly modified format
14 in November 2005. The new invoices included a list of tasks and a separate list that showed
15 the number of hours each employee worked and the hourly charge. The new billing format
16 represented Kroll and Willkie Farr's attempted appeasement of the City Attorney's request to
17 provide more detailed billing. The bills, however, remained in a format that could not be
18 audited for quality and cost control.

19 56. The first Willkie Farr invoice sent to the City that included the new line item of
20 tasks and the total number of hours billed by employees was delivered on 16 November 2005
21 for a total of \$849,157.

22 57. Identical to the Kroll bills, the Willkie Farr invoices consisted of two tables.
23 The invoices first listed the employee, their billing rate, and the total billed that period. For
24 example, the following table appeared on the September 21, 2006 invoice from Willkie Farr:

27 ²⁷ Willkie Farr invoices dated May 19, 2005; May 17, 2005; June 22, 2005; July 15, 2005; July 18, 2005; August
18, 2005; August 31, 2005; September 13, 2005; September 19, 2005; and October 19, 2005. (Exhibit 20).

28 ²⁸ Exhibit 20.

Professional	Hours Billed	Hourly Rate	Total
Jack Nusbaum	5.80 hours	\$865 per hour	\$5,017.00
Benito Romano	103.80 hours	\$850 per hour	\$88,230.00
Michael Young	77.50 hours	\$850 per hour	\$65,875.00
Michael Schachter	41.20 hours	\$590 per hour	\$24,308.00
Sharon Blaskey	141.90 hours	\$505 per hour	\$71,659.50
Brian Turetsky	84.40 hours	\$450 per hour	\$37,980.00
Michael Shaprio	108.20 hours	\$435 per hour	\$47,067.00
Jessica Ruiz del la Torre	127.80 hours	\$325 per hour	\$41,535.00
Raymond Sarola	103.50 hours	\$325 per hour	\$33,637.50
Brian Faerstein	133.60 hours	\$255 per hour	\$34,068.00
Ann Calle	192.50 hours	\$140 per hour	\$26,950.00
Caitlin Williams	2.00 hours	\$140 per hour	\$280.00
Total Billed Time	1,122.20 hours		\$476,607.00

58. In a separate table, on a separate page in the invoice, Willkie Farr included a list of tasks and the total billed for that period—without any indication of which employee was working on the task for what period. For example, the following table appeared on the September 21, 2006 invoice from Willkie Farr:

Task	Current Invoice
1) Efforts directed to seeking compliance by the City with all regulatory and government subpoenas and document requests.	\$0.00
2) Review of hardcopy documents turned over by City employees and Elected Officials in response to various regulatory and governmental subpoenas and document requests.	\$0.00
3) Review of City e-mail and electronic documents.	\$0.00
4) Discussions with law enforcement authorities and auditors as to progress on investigative efforts.	\$0.00
5) Review and processing of information collected by Vinson & Elkins as part of its investigation including examination of witness memoranda, exhibits, and related materials.	\$0.00
6) Preparation for witness interviews, interviews of key witnesses, and follow-up regarding the same.	\$13,715.50
7) Formulation of program for preparation of written report including consideration of issues to be addressed in report, assessment of currently available information, legal research, and identification of areas requiring additional activity.	\$314,583.00
8) Projects concerning the Board of the San Diego City Employees' Retirement System.	\$0.00
9) Activities related to oversight and management of investigative team.	\$148,308
Total Professional Fees	\$476,607.00

59. These invoices are insufficient to meet the internal controls of the City because an audit review of the work is not possible given the inadequate separation of employees, hours, and duties. Willkie Far submitted 11 invoices under this billing format for a total of

1 \$8.6 million. It is important to re-emphasize that the first invoice submitted to the City
2 included a line item breakdown on what each employee was doing, the time spent, the task,
3 and the cost. However, that level of detail—required by the City of all consultants like
4 Kroll—was inexplicably stopped.

5 60. On information and belief, Willkie Farr modified its billing practice in
6 November 2005 in an intentional effort to deprive the City of the ability to detect the falsity of
7 Levitt's earlier statement about his desire to complete the investigation by year's end.

8 **D. Willkie Farr Bills The City Nearly \$1 Million Without Contractual**
9 **Authority, Without Cause, And Without Adequate Reporting**

10 61. Willkie Farr's invoices showed that 43 of its own employees billed the City
11 between \$65 and \$865 per hour for their supposed work on the investigation.²⁹ The firm
12 billed more than \$1.13 million for document review in the final 11 months of the
13 investigation. The firm, however, billed the City more than \$939,400 for "outside
14 consultants" that "includes temporary attorneys engaged through Update Legal to assist in the
15 review of City email and electronic documents...Outside Consultants also include temporary
16 legal assistants/administrative professionals to support the investigation..."³⁰

17 62. Willkie Farr engaged these outside consultants without contractual authority,
18 without cause, and without adequate reporting. Willkie Farr never provided any hourly logs,
19 pay rates, and task sheets for these consultants' work.

20 63. Willkie Farr's failures in this regard make it impossible for the City either to
21 audit the work of the temporary employees or to perform a quality analysis of the firm's
22 reputation or the work it does.

23 64. On information and belief, the City alleges that Willkie Farr knowingly and
24 falsely reported the work of these consultants.
25
26

27 ²⁹ Table identifying Willkie Farr employees and billing rates identified in Willkie Farr's invoices to the City.
(Exhibit 21).

28 ³⁰ Exhibit 20.

1 **E. Kroll And Willkie Farr Submit False Claims Related To June 10 Memo**
2 **Documents Review**

3 65. At the start of Kroll's work, the City had been under investigation by the SEC
4 and U.S. Attorney's Office for nearly a year and had responded to a number of subpoenas,
5 which yielded a collection of more than a million paper documents.³¹ These documents were
6 stored at Civic Center Plaza, which also houses the San Diego City Attorney's Office. Kroll
7 officials were given unfettered access to this information.

8 66. Despite the massive collection of documents in the City's possession, at
9 Kroll's and Willkie Farr's behest, the Mayor and City Manager issued a memo on June 10,
10 2005 requesting a duplicative document collection from thousands of employees across the
11 City bureaucracy. The letter stated:

12 Ongoing communication with law enforcement agencies. The
13 issue being addressed with the United States Attorney and the
14 Securities and Exchange Commission include the completion of
15 a comprehensive document production for the City and
16 SDCERS. Due to issues with prior production of material
 subpoenaed by the law enforcement agencies, we have provided
 a memorandum to City employees and Council Members
 requesting complete production of subpoenaed materials and
 individual certification of completion of that task.³²

17 67. The memo provided, as identified in the June 10, 2005 update discussed above,
18 was a letter from the Mayor and City Manager to, "All City Employees, City Council, and
19 San Diego City Retirement System" that requested documents. The letter stated:

20 As you know, we have received a number of subpoenas from
21 law enforcement authorities requiring production of a broad
22 range of documents related to matters under investigation.
 Additional investigative activity is now also being undertaken
 by the City's Audit Committee.

23
24 ³¹ It is worth noting that the information stored in the documents repository was enough for the U.S. Grand Jury
25 to indict six former and current members of the San Diego City Employees' Retirement System on January 6,
26 2006; January 6, 2006. United States District Court Southern District of California January 2004 Grand Jury:
27 United States of America, Plaintiff, v. Ronald Saathoff (1), Cathy Lexin (2), Teresa Webster (3), Lawrence
28 Grissom (4), Lorraine Chapin (5), Defendants. Criminal Case No. 06CR0043BEN. Indictment: Title 18, U.S.C.,
Sec. 371 – Conspiracy to Commit Wire and Mail Fraud; Title 18, U.S.C., Secs. 1343 and 1346 – Wire Fraud;
Title 18, U.S.C., Secs. 1341 and 1346 – Mail Fraud; Title 18, U.S.C., Sec. 2 – Aiding and Abetting. (Exhibit 22).
³² June 10, 2005 letter from Troy Dahlberg, Audit Committee member, to Hon. Richard Murphy, mayor of the
City of San Diego. Re: "Audit Committee Update". (Exhibit 23).

1 We recently have discovered that documents called for by these
2 subpoenas were not timely identified and made available to us
3 for production to the authorities. We are therefore circulating
4 the attached lists of documents and advising all personnel that
5 each employee is to study the lists carefully, search their
6 electronic and non-electronic files, and immediately identify
7 and make available all responsive documents.³³

8 68. Over the next few months, a monumental effort by City staff—many of whom
9 were not involved in the matters under federal investigation or who were not employed by the
10 City at the time of the events – produced more than one million paper documents.³⁴

11 69. City officials began expressing concern about the scope of the documents
12 requested by Kroll through the Mayor and City Manager's letter of June 10, 2005. The City's
13 Chief Information Officer, Rey Arellano, addressed that anxiety in a letter to Lynn Turner on
14 June 23, 2005.³⁵ Arellano wrote:

15 The questions generally surround the specific process to be used
16 to conduct a search of electronic files and e-mail, whether
17 search terms will be provided, why every City employee
18 regardless of how far removed they may be from any of the
19 issues needs to respond, and various questions specific to some
20 departments' unique circumstance.³⁶

21 70. Kroll and Willkie Farr, however, did not pare down the request and continued
22 to collect boxes of documents —many of which had already been collected in response to
23 subpoenas from federal investigators.

24 71. It is impossible, however, to determine whether Kroll representatives reviewed
25 the documents already collected in response to the subpoenas because Kroll's bills failed to
26 include detailed task listings.

27 72. On information and belief, the City alleges that Willkie Farr knowingly and
28 falsely billed for work that was not performed reviewing unnecessary.

26 ³³ Exhibit 23.

27 ³⁴ Exhibit 23.

28 ³⁵ June 23, 2005 letter from Rey Arellano, chief information office for the City of San Diego, to Lynn Turner.
(Exhibit 24).

³⁶ Exhibit 24.

1 73. Later in the investigation, Kroll said that part of the reason for the delay in the
2 completion of its investigation was that more documents were returned to Kroll than
3 expected. In a letter to the City Council on September 23, 2005, Dahlberg explained the
4 issue:

5 Obtaining written confirmation of compliance with our requests
6 from individual employees involved literally hundreds of daily
7 contacts... Together with closely monitoring the delivery of
8 responsive documents to the City's document repository, these
9 daily telephone contacts consumed hundreds of hours of
10 unanticipated Audit Committee staff time.³⁷

11 Dahlberg continued in the letter:

12 We are currently in the process of completing our review of the
13 hard copy documents that have been produced under our June
14 10th Memo. The review of these documents has been far more
15 time intensive than we first estimated due to the unanticipated
16 large volume of documents that were produced. We have
17 brought on additional Audit Committee staff to review these
18 records. We anticipate completing this review... by the end of
19 the week.³⁸

20 74. Kroll and Willkie Farr admitted that the June 10th memo was too broad and
21 required additional staffing levels, all billed to the City. The review of the documents would
22 also not be done "by the end of the week."

23 75. Despite concerns by the City staff and the admission by Kroll and Willkie Farr
24 that the additional document request had been too broad and thus, it would cost the City more
25 money to review these unnecessary documents, the firms continued to send large bills to the
26 City without any detail. From the time of the June 10 memo through the arrival of the Kroll
27 invoice covering to September 30, 2005, the time of the status report's arrival, the firm billed
28 the City approximately \$1.9 million. Willkie Farr, in comparison, submitted invoices for this
period of time totaling \$2.2 million. Based on the comments from Dahlberg, a large portion
of the expenses were for document review.

³⁷ September 23, 2005 letter from Lynn E. Turner and Troy Dahlberg to Honorable Mayor Toni Atkins and
Members of the City Council. "Re: Audit Committee - Investigation Status Update." (Exhibit 25).

³⁸ Exhibit 25.

1 76. The firms sent another update letter to the City on October 25, 2005 making
2 clear that the documents production was “successfully completed” and that “all responsive
3 documents have been identified, and delivered to the City’s document repository for
4 production to the government.”³⁹ The letter also stated that a large amount of the documents
5 returned in response to the Audit Committee request had been reviewed. The letter stated:

6 Since late September we have reviewed approximately 250
7 boxes of documents collected according to procedures described
8 in a June 10, 2005 memorandum to all City employees (“June
9 10, Memo”) for approximately 35 key individuals of interest.⁴⁰

10 Representatives of Kroll appeared back before the City Council on November 1, 2005 and
11 echoed this issue. Lynn Turner told the City Council:

12 In response to our June 10th, 2005 memo, city employees
13 produced a volume of documents far greater than that we had
14 identified which required more time to review.⁴¹

15 77. The firm, again, ignored Arellano’s June 23, 2005 request to pare down the
16 search for fear too many documents would be returned. Turner also stated in his November 1,
17 2005 presentation to the City Council that Kroll and Willkie Farr had searched the majority of
18 the documents collected in response to the Audit Committee production request. Turner said:

19 We have reviewed in excess of approximately 500 boxes of
20 documents of individuals that we have identified as important to
21 our investigation... This document review is made possible
22 because we have successfully completed document collection in
23 response to a dozen outstanding government subpoenas.⁴²

24 78. During the time frame discussed by the Audit Committee in the update to the
25 City—the period between “late September” and October 25, 2005—Kroll billed the City more
26 than \$489,000 for additional document review. The City also received another invoice
27 without any detail from Kroll for the period covering September 17, 2005 to September 30,
28

³⁹ October 25, 2005 letter from Arthur Levitt, Audit Committee member; Lynn Turner, Audit Committee member; and Tory Dahlberg, Audit Committee member; to Honorable Mayor Toni Atkins. Re: Audit Committee – Investigation Status Update. (Exhibit 26).

⁴⁰ Exhibit 26.

⁴¹ November 1, 2005 transcript of the San Diego City Council meeting. P. 29. (Exhibit 27).

⁴² Exhibit 27.

1 2005 for \$485,862.⁴³ During this same period, Willkie Farr submitted two invoices that
2 included \$228,914 for document review and an additional \$40,243 for outside consultants to
3 conduct documents review. Willkie Farr also sent an invoice lacking any task listing to the
4 City on 19 October 2005 for a total of \$980,181.

5 79. Based on evidence presented above, Willkie Farr billed for work that was
6 outside of agreed scope in the April Letter Agreement.

7 80. The dissemination of the June 10 memo for the massive document production
8 and the Audit Committee's blatant disregard to City staff's concerns that volume of
9 documents response would be too large and unnecessary. The document review as a result of
10 the June 10 memo is a violation of False Claims Act because Willkie Farr fraudulently stated
11 the necessity of the production in an effort to oversee compliance to federal subpoenas, a
12 matter which was completely outside the scope of Willkie Farr's engagement.

13 **F. Kroll And Willkie Farr Submit False Claims Related To Discussions With**
14 **The *San Diego Union-Tribune***

15 81. On information and belief, Kroll and Willkie Farr billed the City for tasks well
16 beyond their contractual mandates for meeting on multiple occasions and engaging in
17 lobbying activities with the editorial board of the *San Diego Union-Tribune*.

18 82. Early in Kroll's work for the City, City Manager P. Lamont Ewell, sent an e-
19 mail on March 3, 2005 to Lynn Turner, of the Audit Committee, asking, "How do you feel
20 about arranging a meeting with you and the Editor of the [Union] Tribune for Monday since
21 you are here? It may help with the next days editorial, which will surely follow given the
22 request of Council to sign the agreement."⁴⁴ The agreement Ewell mentioned is a letter that
23 Turner asked City Council members to sign to "refrain from the personal criticism and
24
25
26

27 ⁴³ Kroll invoices to the City of San Diego sent on October 24, 2005; November 16, 2005; and November 18,
2005. (Exhibit 28).

28 ⁴⁴ March 3, 2005 e-mail from P. Lamont Ewell to Lynn Turner. Subject: "Re: Resolution/Letter for Council"
(Exhibit 29).

1 accusation...whether it be in this Chamber, the press conferences...or elsewhere.”⁴⁵

2 Councilmember Donna Frye and the City Attorney refused to sign the agreement.

3 83. This period was marked by a contentious atmosphere following the City
4 Attorney’s release of a series of Interim Reports.

5 84. Rather than perform the functions for which they were hired, Willkie Farr at
6 that point lobbied the *Union-Tribune* editorial board, a task that the firm was not contractually
7 authorized to perform.

8 85. An additional Ewell e-mail illustrates that Kroll and Willkie Farr over a period
9 of months lobbied the *Union-Tribune* editorial board and representatives of the San Diego
10 Regional Chamber of Commerce, a local pro-business group, to support the payment of Kroll
11 and Willkie Farr invoices.

12 86. For example, Ewell received an e-mail from Turner outlining an update to
13 *Union-Tribune* editors stating,

14 I did have a call today with Bill Osbourn [sic] updating him on
15 our progress – I did tell him this was not going to be done
16 quickly as he was asking for timing. I said we were committed
17 to the thorough and comprehensive investigation that KPMG
18 would require prior to signing off. Bill Kettle [Bob Kittle,
19 director of the Union –Tribune editorial page] was on the other
20 line and Bill was going to have him call me when I return from
21 DC.⁴⁶

22 87. Ewell continued to receive updates from Turner after conversations with the
23 *Union-Tribune* editorial board. Turner sent an e-mail on April 22, 2005 stating, “Just got off
24 the line with Kittle he seemed to understand what was going [on].”⁴⁷ As evidenced by e-mails
25 found from Ewell, Turner was also updating other members of the community. In an April

26 ⁴⁵ Minutes from the March 7, 2005 meeting of the San Diego City Council.[sic] San Diego City Council
27 resolution R-300203. (Exhibit 30).

28 ⁴⁶ April 12, 2005 e-mail from Lynn Turner to P. Lamont Ewell. Subject: “Re: Update” (Exhibit 31).

⁴⁷ April 22, 2005 e-mail from Lynn Turner to P. Lamont Ewell. Subject: “Re: Just got off the line with Kittle.”
(Exhibit 32).

1 24, 2005 e-mail to Ewell, Turner wrote, "In addition to talking to the press, I have also alerted
2 the Chamber as to current events as well as the two council members who are our contacts."⁴⁸

3 88. At this time, a series of articles touting the City's need for Kroll appeared in
4 the *Union-Tribune* editorial pages. The first article was a question-and-answer session
5 between representatives of Kroll, Willkie Farr, and the *Union-Tribune* editorial board.
6 According to the article, printed on May 15, 2005,⁴⁹ Levitt commented on the timing for the
7 conclusion of the investigation and stated:

8 I think this project calls for a resolution by the end of the year. I
9 don't know very much about whether it's a million or two
million or exactly what the number is.⁵⁰

10 89. Turner, who was also present at the meeting, echoed Levitt's timing estimates.
11 Turner said, "We've got to be there by the end of the year."⁵¹ The next *Union-Tribune*
12 editorial appeared on August 11, 2005 and provided a more forceful endorsement for Kroll.
13 The *Union-Tribune* editorial board wrote:

14 The indispensable key to getting the city back on its feet
15 financially is the three-member audit committee chaired by
16 former Securities and Exchange Commission chairman Arthur
17 Levitt. Operating with total independence, the panel is assisting
18 KPMG, the city's outside auditor, in completing the stalled
19 financial statements that have locked San Diego out of capital
20 markets for over a year... This probe is instrumental to both the
21 SEC's anticipated enforcement action against the city and U.S.
Attorney Carol Lam's criminal investigation... Without the
independent oversight provided by the audit committee, all of
San Diego's efforts to regain its financial strength would
collapse in one catastrophic stroke... If Aguirre is incapable of
becoming part of the solution, he at least must stop obstructing
those who are committed to moving San Diego forward
responsibly.⁵²

25 ⁴⁸ April 24, 2005 e-mail from Lynn Turner to P. Lamont Ewell. Subject: "Re: Horribly Misquoted." (Exhibit
26 33).

27 ⁴⁹ May 15, 2005 "Q&A: Lynn Turner, Arthur Levitt, Benito Romano." *San Diego Union-Tribune*. (Exhibit 34).

28 ⁵⁰ Exhibit 34.

⁵¹ Exhibit 34.

⁵² Exhibit 11.

90. Levitt also submitted an article for publication in the *Union-Tribune* which was printed on August 11, 2005.⁵³ On information and belief, the City was billed for the preparation of an article that advocated the necessity of retaining Kroll.

VI.

KROLL'S EFFORTS TO LIMIT ITS LIABILITY TO THE CITY DO NOT PROTECT WILLKIE FARR

91. The City hired Kroll before Kroll proposed Willkie Farr be hired. Kroll's contract purported to prevent the City from holding Kroll and others liable under the contract.⁵⁴

92. Kroll's exculpatory language does not bar the claims asserted herein because, among other reasons:

- a. the provision is contrary to public policy and unenforceable in its entirety;
- b. the provision does not apply to Willkie Farr, whose involvement was not then known or contemplated, and Willkie Farr is not identified either specifically or categorically in the provision;
- c. a lawyer cannot prospectively obtain a release of liability for the wrongdoing alleged herein, and even the request for such a release is unethical,
- d. any purportedly effective release obtained for the benefit of Kroll was superseded and rendered null and void by the April Letter Agreement, which does expressly contemplate Willkie Farr being held liable for its negligence, and

⁵³ Levitt, Arthur “Reviving San Diego: Looking at the numbers at City Hall.” *San Diego Union-Tribune*. August 11, 2005. (Exhibit 35).

⁵⁴ Exhibit 8.

1 impliedly contemplates liability on the other grounds
2 asserted herein.

3 **VII.**

4 **PARTIES**

5 93. Plaintiff, City of San Diego, is a municipal entity established by charter
6 pursuant to California Constitution Article XI section 3.

7 94. On information and belief, Defendant Willkie Farr is an entity of unknown
8 qualification, which purports to be a limited liability partnership, headquartered in New York,
9 New York, and doing business internationally. On information and belief, Willkie Farr has
10 partners who are United States Citizens, but are domiciled abroad, such that the City could not
11 have filed this case in federal court under section 1391.

12 95. Plaintiff is ignorant of the true names and capacities, whether individual,
13 corporate, associate, or otherwise, of defendants Does 1 through 100, inclusive. Upon
14 information and belief, each fictitious defendant is in some way responsible for, participated
15 in, or contributed to, the matters and things of which Plaintiff complains herein, and in some
16 fashion, has legal responsibility therefore. When Plaintiff ascertains the exact identity of each
17 such fictitious defendant and the nature of such fictitious defendant's responsibility for,
18 participation in, and contribution to, the matters and things herein alleged, Plaintiff will seek
19 to amend this Complaint to set forth the same.

20 96. Plaintiff is informed and believes and thereon alleges that each defendant
21 named in this action, including Doe defendants, at all relevant times, was the agent, ostensible
22 agent, servant, employee, representative, assistant, joint venturer, and/or co-conspirator of
23 each of the other defendants, and was at all times acting within the course and scope of his,
24 her, or its authority as agent, ostensible agent, servant, employee, representative, joint
25 venturer, and/or co-conspirator, and with the same authorization, consent, permission or
26 ratification of each of the other defendants.

VIII.

CLAIMS

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

(Against Defendant Willkie Farr)

97. The City restates the previous paragraphs of this Complaint as if fully set forth here.

98. Willkie Farr and the City entered into the April Letter Agreement (Exhibit 1 hereto) to set forth the fees for which the City would be responsible.

99. Expressly or impliedly, or both, the April Letter Agreement required V&E to comply with professional standards of care.⁵⁵

100. The April Letter Agreement expressly set forth the agreed scope of Willkie Farr's services.

101. Expressly or impliedly, the April Letter Agreement provided that Willkie Farr would bill the City for those services set forth therein, and none other.

102. Willkie Farr billed the City for work not set forth in the agreed scope, and even if in the agreed scope, for work that was unnecessary and unproductive.

103. The City performed all covenants, conditions, terms, and promises required to be performed by it by the April Letter Agreement, except for any obligations that were excused by Willkie Farr's conduct and refusal to perform.

104. Willkie Farr materially breached the April Letter Agreement by engaging in the acts alleged herein.

105. Willkie Farr's material breaches directly and proximately caused damage and injury to the City, in an amount presently unknown, in an amount according to proof at trial, but not less than \$9,759,918.25.

⁵⁵ Benenato v. McDougall (1913) 166 Cal. 405, 408 (professional service agreement implies performance in compliance with professional standards).

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1 City. Initially, at the time of the April Letter Agreement, it was not anticipated that Willkie
2 Farr would represent the City as the City's lawyer. This anticipation changed over time, and,
3 in fact, Willkie Farr did undertake representation of the City. For example, in 2005 Willkie
4 Farr represented the City, and billed the City for its representation, for legal work associated
5 with meeting with the US Attorney and the SEC and providing substantive reports and having
6 discussions with law enforcement authorities on the City's behalf. Willkie Farr continuously
7 represented the City regarding the same, specific subject matter (the causes, nature, and extent
8 of the City's pension under funding) on a variety of matters until at least August 8, 2006, at
9 which time it and Kroll presented the Kroll Report to the City.

10 111. Willkie Farr's misconduct, including the unauthorized practice of law in
11 California, violated applicable professional and ethical standards, including the California
12 Rules of Professional Conduct. As such, the City requests and demands the disgorgement of
13 all fees paid to Willkie Farr because of such violations.

14 **THIRD CAUSE OF ACTION**

15 **INTENTIONAL FRAUD – CONCEALMENT**

16 **(Against Defendant Willkie Farr)**

17 112. The City restates the previous paragraphs of this Complaint as if fully set forth
18 here.

19 113. Willkie Farr was under a duty to tell the complete truth about the work Willkie
20 Farr was performing, and not to engage in obfuscation, half-truths, and omissions.

21 114. Willkie Farr intentionally concealed material facts about the work Willkie Farr
22 was performing, supposedly on the City's account, but which was not in the agreed scope and
23 that was being performed only to advance Willkie Farr's interests, not the City's interests.
24 Dahlberg intentionally concealed this information in his June 10, 2005 status report, when he
25 represented that the lawyers were being used for one narrow purpose: "to obtain guidance on
26 matters of law."⁵⁶ Dahlberg and Willkie Farr continuously concealed the true extent and
27

28 ⁵⁶ June 10, 2005 letter from the Audit Committee of the City of San Diego to Hon. Richard Murphy. (Exhibit 2).

1 nature of the legal services Willkie Farr was rendering, supposedly on the City's account, but
2 in fact beyond the agreed-upon scope.

3 115. At the time of the concealment, Willkie Farr intended for the City to rely upon
4 Willkie Farr's obfuscation, half-truths, and omissions. In concealing material facts, Willkie
5 Farr intended to and did defraud the City.

6 116. The City reasonably and actually relied on Willkie Farr's obfuscation, half-
7 truths, and omissions discussed more fully above.

8 117. Had the City known these concealed facts, the City would have properly
9 refused to pay Willkie Farr's fees.

10 118. Alternatively, on information and belief, Dahlberg and Willkie Farr agreed
11 between themselves to withhold pertinent information concerning the activities and expenses
12 for which Kroll and Willkie Farr were billing, such that all of the successive bills that Willkie
13 Farr submitted after the May 17, 2005 bill omitted material information necessary to make
14 them not false and misleading.

15 119. Alternatively, on information and belief, all of Willkie Farr's bills after May
16 17, 2005 contained knowingly false billing charges, the particulars of which are presently
17 unknown to the City.

18 120. As a direct and proximate result of Willkie Farr's actions, the City has suffered
19 substantial loss and injury in an amount according to proof at trial, but not less than
20 \$9,759,918.25.

21 121. Willkie Farr's misconduct in causing the injuries and damage to the City was
22 intentional, willful, malicious and oppressive. The City is entitled to an award of punitive and
23 exemplary damages against Willkie Farr in an amount to be established according to proof at
24 the time of trial.

FOURTH CAUSE OF ACTION
FALSE CLAIMS ACT
(Government Code §§ 12650-12655)
(Against Defendant Willkie Farr)

122. The City restates the previous paragraphs of this Complaint as if fully set forth here.

123. As alleged herein, Willkie Farr made claim for payments to a public agency, viz., the City.

124. Section V of this Complaint alleges the presently known Willkie Farr false claims to the City at the time Willkie Farr was requesting payment from the City.

125. Section V of this Complaint alleges the presently known false claims made by Levitt, the Audit Committee, and Kroll to the City at the time Willkie Farr was requesting payment from the City. As to those false claims, the City alleges on information and belief that Willkie Farr became aware of the statements' falsity, and failed to disclose the false claims to the City, for which Willkie Farr is liable pursuant to Government Code section 12651(a)(8).

126. Alternatively, on information and belief, Kroll and Willkie Farr agreed between themselves to withhold pertinent information concerning the activities and expenses for which they were billing, such that all of the successive bills that Willkie Farr submitted after the May 17, 2005 bill omitted material information necessary to make them not false and misleading.

127. Alternatively, on information and belief, all of Willkie Farr's bills after May 17, 2005 contained knowingly false billing charges, the particulars of which are presently unknown to the City.

128. Willkie Farr made the other false claims to the City herein alleged at the time Willkie Farr was requesting payment of then pending invoices.

1 129. The City made the payments to Willkie Farr not knowing the falsity of Willkie
2 Farr's claims.

3 **FIFTH CAUSE OF ACTION**

4 **FOR UNFAIR BUSINESS PRACTICES**

5 **(Business & Professions Code § 17200 *et seq.*)**

6 **(Against Defendant Willkie Farr)**

7 130. The City restates the previous paragraphs of this Complaint as if fully set forth
8 here.

9 131. Willkie Farr's conduct, as alleged herein, constitutes unfair business practices
10 and unlawful business practices in violation of § 17200 *et seq.* of the Business and
11 Professions Code. Such unfair and unlawful practices include, but are not limited, to

- 12 a. the unauthorized practice of law in California,
13 b. the violation of applicable professional and ethical standards, including
14 the California Rules of Professional Conduct,
15 c. the unlawful making of false claims relative to the status of the
16 investigation; and
17 d. knowingly violating the City's internal billing controls

18 132. As a direct and proximate result of Willkie Farr's wrongful conduct, the City
19 has been damaged in an amount according to proof at trial, but not less than \$9,759,918.25.

20 133. The City also seeks to obtain civil penalties, restitution and other remedies for
21 Willkie Farr's violations of law as alleged herein.

22 **IX.**

23 **PRAYER FOR RELIEF**

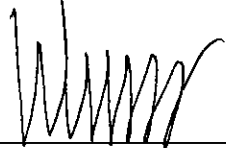
24 WHEREFORE, the City prays for judgment and damages against each Defendant as
25 follows:

- 26 1. For general damages according to proof;
27 2. For special damages according to proof;

3. For disgorgement of fees, unjust enrichment and restitution;
4. For punitive damages for intentional fraud;
5. For treble damages for violating the False Claims Act;
6. For restitution and civil penalties pursuant to § 17200 *et. seq.* of the Business and Professions Code;
7. For the costs of suit herein; and,
8. For such other and further relief as the Court deems just and proper.

BRYAN C. VESS APC

By: _____


Bryan C. Vess
Attorneys for Plaintiff
CITY OF SAN DIEGO